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No. 73-1880

In the

Supreme Court of the United States

OCTOBER TERM, A.D. 1973

THE CHICAGO PATROLMEN'S ASSOCIATION, a Not-for-Profit Corporation, in Behalf of Various Members of the CHICAGO POLICE DEPARTMENT and RICHARD GAFFNEY, BERNARD B. O'REILLY and ROBERT A. ROSSI, Members of the Chicago Police Department,

Petitioners,

vs.

THE CITY OF CHICAGO, a Municipal Corporation, and DAVID STAHL, City Comptroller,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

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To the Honorable, The Chief Justice, and the Associate Justices of The Supreme Court of the United States.

Petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Illinois.

JUDGMENT AND OPINION OF THE COURTS BELOW

The Order of the Circuit Court of Cook County granting summary judgment against Respondents was entered in

favor of the Petitioners on May 24, 1973, and said order, judgment and decree is set forth herein as Appendix B.

The opinion of the Supreme Court of Illinois, considering this cause on direct appeal from the Circuit Court of Cook County and reversing and remanding the cause to that court with directions to dismiss the action, was filed on March 20, 1974, and is set forth herein as Appendix A.

The order, judgment and decree of the Circuit Court of Cook County is unreported. The opinion of the Supreme Court of Illinois is at present not yet reported.

STATEMENT OF JURISDICTION

The judgment and opinion of the Supreme Court of Illinois was entered on March 20, 1974. No Petition for Rehearing was filed.

The jurisdiction of this Court is invoked under Title 28, Section 1254, United States Code, 62 Stat. 928.

QUESTIONS PRESENTED

I. Whether the provision of Illinois Statutes nullifying contracts made and expenses incurred by municipal corporate authorities prior to appropriation concerning those contracts and expenses is unconstitutional, insofar as applicable to Chicago police officers, as a violation of the Federal Constitution forbidding the impairment of contracts by state action, in that the relevant statutory provision both encourages the making of contracts before appropriation, delegates authority to municipalities so to do, and at the same time renders contracts so made null and void?

II. Whether the application in the instant cause by the Supreme Court of Illinois of an Illinois statutory scheme which places the Chicago Police Superintendent in a posi-

tion to promise benefits and job conditions to policemen and thereupon precludes fulfillment of such promises, despite the policemen's reliance thereon, is improper and furthermore constitutes a denial of due process to Petitioners?

III. Whether the action of the City of Chicago, in classifying differently, without valid reason, those policemen reaching their next step or longevity classification prior to August 14, 1971, from those reaching such step after that date, constitutes a denial of the right to equal protection of the laws?

IV. Whether the Supreme Court of Illinois, in reversing and remanding this cause to the Circuit Court below with directions to dismiss the action violated the provisions of the Illinois Civil Practice Act concerning summary judgments and generally went outside the procedures as to the scope of review of summary judgments, and as to cases with agreed findings of facts?

CONSTITUTIONAL PROVISIONS AND STATUTORY PROVISIONS INVOLVED

Article 1 §10 and the Fourteenth Amendment, §1, to the United States Constitution, Illinois Revised Statutes, 1971, Chapter 24, sec. 8-1-7, Illinois Revised Statutes, 1971, Chapter 24, sec. 57, Illinois Revised Statutes, 1971, Chapter 110A, sec. 191 & 192, and the Municipal Code of Chicago, Illinois Chapter 11, Sec. 6(5) are involved herein and are set forth in Appendix C.

STATEMENT OF THE CASE

This Petition arises out of a class action by certain individual members of the City of Chicago Police Department and by the Chicago Patrolmen's Association against the City of Chicago. The purpose of the action

is to compel the City to pay to the police officers certain "step" and "longevity" salary increases for the year 1972. Both parties moved for summary judgment, and the trial court entered a decree ordering that the City forthwith pay to each member of the police force who would have been entitled to step or longevity increases during 1972 the sum of money to which he would have been entitled. The decree also ordered that the entire period of time from August 14, 1971, to and including December 31, 1972, was to be counted by the defendant City in determining the step and longevity position of each member of the Chicago Police Department who was employed during all or any portion of that period.

The City appealed, and it was ordered, pursuant to Illinois Supreme Court Rule 302(b), that the appeal be transferred to the Supreme Court of Illinois.

The question on appeal was whether, as a matter of law, the plaintiffs are entitled to step and longevity increases during the year 1972 and time credits from August 14, 1971, to December 31, 1972.

The Supreme Court of Illinois held that, under section 8-1-7 of the Municipal Code (Ill. Rev. Stat. 1971, Ch. 24, par. 8-1-7), any contract made without a prior appropriation is null and void, and that this statutory provision was applicable to the instant cause. The Supreme Court of Illinois reversed the judgment of the Circuit Court of Cook County and remanded the cause to that court with directions to dismiss the action.

For many years prior to 1971 the Superintendent of Police published and distributed various materials to recruits and existing members of the Chicago Police Department representing that salaries within each police job classification would be increased upon reaching 6, 18,

30 and 42 months of service (R.C. 12-19, 122). These increases are referred to as "step increases". The Superintendent further represented that increases within the job classification would be made upon reaching 5 and 10 years of service (R.C. 122). These are referred to as "longevity increases."

For a number of years prior to 1972, the annual appropriation ordinances of the City had provided for specific starting wages for the various job classifications within the civil service system, for "step" increases within each job classification based upon months of service in that classification, and for additional "longevity" increases as individual employees reach the maximum pay range within their classification. The appropriation ordinance for the year 1971 provided for such increases, and they were paid to those City employees who qualified for them until August 15, 1971. On that date, the President of the United States, pursuant to the Economic Stabilization Act of 1970 (Pub. L. No. 91-379), 84 Stat. 799), issued Executive Order No. 11615, which froze all prices, rents, wages and salaries for a period of 90 days, and thereby prevented the payment of step and longevity increases to those who qualified for them on and after August 15, 1971.

On October 15, 1971, the President issued an Executive Order establishing Phase II of the wage-price freeze and the Cost of Living Council, which set forth guidelines limiting salary increases to 5.5%. On November 14, 1971, the Federal Pay Board issued the following interpretation concerning longevity and related wage increases (R.C. 6):

> Allow without regard to the 5.5% standard, the resumption of longevity increases and automatic progression within a rate range according to the terms

of plans or established practices in existence prior to November 14, 1971. (36 F.R. 21952) (Appendix B —Findings of Fact)

The appropriation ordinance of the City for the year 1972 was passed on December 10, 1971. During the year 1971 the Superintendent continued to distribute these materials, which showed the rate of salary paid to each member of the police force based upon his job classification and number of months of service. These materials continued to be distributed in early 1972, and the materials distributed at that time showed the rates established in the 1972 budget but continued to represent the availability of step and longevity increases (R.C. 12-19, 122). The trial court found (See Appendix B—Findings of Fact) that these publications were in fact distributed and relied upon by members of the plaintiff class (R.C. 122).

The City appropriation ordinance normally sets forth for each department a summary page utilizing certain code numbers or "line items" and thereafter in subsequent pages lists the dollar breakdowns by operating divisions. On the 1972 summary page, the line item customarily used for step increases (line item .015) was listed but no dollar amount was extended therefrom; and the line item customarily used for longevity increases (line item .041) was omitted entirely from the summary page. However, the 1972 detail pages continued to list seven wage levels for each appropriate category of policemen at an aggregate numerical level and dollar appropriation level so far above the actual numbers of policemen employed in each category at the time the budget was adopted that all step and longevity increases could easily have been accommodated from the amounts appropriated. It is admitted that over $12,000,000 originally appropriated for wages and salaries for 1972 (summary page, line item

.005) remained unexpended at the close of the fiscal year (R.C. 94). The trial court accordingly found that "the 1972 City budget adopted by the City Council of the City of Chicago in December 1971 contained an appropriation adequate and sufficient to fund all established in-step and longevity increases due to Chicago policemen during 1972." (R.C. 121). (Appendix B—Findings of Fact)

Subsequent to the adoption of the 1972 budget, the Department of Police continued to represent to police officers that step and longevity increases would be granted —in fact, the materials distributed about that time showed the new salary scheduled in the 1972 appropriation ordinance while at the same time referring to the continuation of the plan of step and longevity increases based on such new rate scales (R.C. 5, 16). The appropriation ordinance itself contains no explicit language or declaration of policy whereby step and longevity increases were eliminated. It was not until members of the plaintiff class noticed the discrepancy between the paycheck and the anticipated sum that the actual course of conduct of the City was discovered. Thereupon the class action was promptly filed with judgment therein being rendered for the plaintiff class. After the commencement of this action, the City announced that 1971 step and longevity increases would be paid retroactively. However, since time served from August 14, 1971, was never counted, on January 1, 1972, the beneficiaries of the 1971 retroactive raises reverted to their previous salary classifications.

ARGUMENT AND REASONS FOR GRANTING THE WRIT

I.

THE PROVISION OF ILLINOIS STATUTES NULLIFYING CONTRACTS MADE AND EXPENSES INCURRED BY MUNICIPAL CORPORATE AUTHORITIES PRIOR TO APPROPRIATION CONCERNING THOSE CONTRACTS AND EXPENSES IS UNCONSTITUTIONAL, INSOFAR AS APPLICABLE TO CHICAGO POLICE OFFICERS, AS A VIOLATION OF THE PROVISION OF THE FEDERAL CONSTITUTION FORBIDDING THE IMPAIRMENT OF CONTRACTS BY STATE ACTION.

For several years, prior to and including 1972, the City of Chicago Superintendent of Police advertised and represented to police officers and candidates that the Chicago Police Department granted step and longevity increases (R.C. 12-19; Appendix B—Findings of Fact). The Superintendent so advertised and represented with full authority within his powers to promote officers, and to promote maximum efficiency within the police force. Municipal Code of Chicago, Illinois, Ch. 11; *Coursey* v. *Board of Fire and Police Commissioners,* Ill., 234 NE2d 339 (1967).

The Chicago policemen relied on these representations and performed their services pursuant thereto (Appendix B—Findings of Fact). There can be no doubt that a plan of compensation including step and longevity increases acts as an incentive for the policemen to give long and faithful service to the community, and that such a plan benefits the public.

Despite the foregoing facts, the Supreme Court of Illinois held in this cause that Ill. Rev. Stat., 1971, ch.

24, sec. 8-1-7 acts to void and nullify any contract for step and longevity increases expressly or impliedly made, absent a prior appropriation, between the Superintendent of Police and the police officers.

A legislative enactment that "permits" the results reached by the Supreme Court of Illinois in the instant cause is unconstitutional as legislation of a state impairing the obligation of contracts made under its authority. *Louisiana ex rel. Southern Bank* v. *Pilsbury,* 105 U.S. 278 (1882). Courts, in enforcing contracts, should pursue the same course and apply the same remedies as though such invalid legislation never existed.

It is one of the highest duties of this Honorable Court to take care that the Constitutional prohibition against States impairing the obligation of contracts shall be neither evaded nor frittered away. *Murray* v. *Charleston,* 96 U.S. 432 (1878). The fact that the state creates a corporation and may repeal its charter gives it no authority to impair the obligation of its contracts. *Curran* v. *Arkansas,* 56 U.S. 304 (1853).

Yet Chapter 24, sec. 8-1-7 of the Illinois Revised Statutes acts to allow the state to impair, evade, and fritter away the obligations entered into by corporate authorities with police officers. Such a legislative enactment is both unconstitutional and generally unsound. As one commentator has stated with regard to this very statute:

> "It would appear that the statutory restriction on municipal contracts lacking a prior appropriation is not one that insures the careful exercise of municipal power, but serves primarily as a trap for the unwary."
>
> Ancel, *Municipal Contracts,* 1961 *Illinois Law Forum* 357, 365.

In *Indiana ex rel. Anderson* v. *Brand,* 303 U.S. 95 (1938), this Honorable Court, on Writ of Certiorari, held that a state Teacher's Tenure Law created a contract obligation which, in the case of a teacher employed by a township school corporation, remains unaffected by a subsequent modification omitting township school corporations from its provisions. This Court noted, in that case, that although the principal function of a legislative body is not to make contracts but to make laws which declare the policy of the state and are subject to repeal when a subsequent legislature shall determine to alter that policy, a legislative enactment may contain provisions which, when accepted as the basis of action by individuals, become contracts between them and the state or its subdivisions within the protection of the provision of the Federal Constitution forbidding the impairment of contracts by state action.

Each City of Chicago appropriation ordinance which contained an appropriation to be used for step and longevity increases, passed under the authority of the Illinois legislature pursuant to Chapter 24, sec. 8-1-7, Illinois Revised Statutes, for each year prior to 1972, constituted a legislative enactment which, in light of the reliance it invited by superintendent and police officers alike, became a contract under the ruling in *Indiana ex. rel. Anderson* v. *Brand, supra.* It is well accepted that a municipal ordinance passed by a municipality in pursuance of authority vested in it by the state legislature, is merely the exercise of delegated legislature power and may properly be considered a law within the meaning of the United States Constitution forbidding the impairment of contracts. *United States ex rel. Ranger* v. *New Orleans,* 98 U.S. 381 (1879); *New Orleans Waterworks Co.* v. *Louisiana Sugar Ref. Co.,* 125 U.S. 18 (1888); *Bacon*

v. *Texas,* 163 U.S. 207 (1896); *St. Paul Gaslight Co.* v. *St. Paul,* 181 U.S. 142 (1901); *Mercantile Trust & D. Co.* v. *Columbus,* 203 U.S. 311 (1906).

To further exacerbate the injustice perpetrated upon Petitioners in this cause, Chpater 24, sec. 8-1-7 of the 1971 Illinois Revised Statutes, in addition to nullifying any contract made or expense incurred by a municipality absent prior appropriation, further provides:

> However, pending the passage of the annual appropriation ordinance for any Fiscal year the corporate authority may authorize heads of departments or other separate agencies of the municipality to make necessary expenditures for the support thereof upon the basis of the appropriations of the preceding fiscal year. (Ill. Rev. Stat., 1971, ch. 24, sec. 8-1-7).

Such a legislative enactment as Chapter 24, sec. 8-1-7, must be declared invalid. It, in effect, renders to a police superintendent the power to make representations to police officers which induce them to perform services in reliance thereon, and at the same time allows a municipality to renege on those promises without affirmative action, but simply by omitting items so represented from the annual appropriation ordinance. It further authorizes a municipality to pass appropriation ordinances which serve to impair the express and implied contractual obligations of that same municipality.

The prohibition of the Federal Constitution against the impairment of the obligation of contracts applies to the contracts of municipal corporations created by permission of the state. *Broughton* v. *Pensacola,* 93 U.S. 266 (1876). The Chicago appropriation ordinance for 1972 constitutes a subsequent legislative enactment, approved by the Illinois statute, which impairs the City's prior

contractual obligations to police regarding step and longevity increases which were brought to bear by prior appropriation ordinances, delegations of power to the Police Superintendent by other state and municipal enactments, and that portion of the Illinois Revised Statutes, 1971, Chapter 24, par. 8-1-7 authorizing corporate authorities to base future expenditures on appropriations of the preceding fiscal year pending passage of the annual appropriation ordinance. As such, that portion of Illinois Revised Statutes, 1971, Chapter 24, sec. 8-1-7 making null and void contracts made and expenses incurred by corporate authorities prior to appropriation clearly is unconstitutional. *Fisk* v. *Jefferson Police Jury,* 116 U.S. 131 (1885).

A similar attempt at escaping liability was made almost a century ago by a municipality, but was not permitted to succeed. In *Village of Evanston* v. *Gunn,* 99 U.S. 660 (1878), this Honorable Court resolved an apparent conflict between a provision which authorized expenditures for sidewalk improvements and one which limited the municipality's borrowing maximum and therefore precluded appropriation for such improvements. This Court, in the personal injury action brought by a pedestrian for injuries sustained due to a defective street, ruled that the Village of Evanston must resolve the apparent conflict in provisions in favor of repairing the streets, and thus could not escape liability. Likewise, in the instant cause, Illinois Revised Statutes, 1971, Chapter 24, sec. 8-1-7 impairs the right of the resident taxpayers of the municipality to good police protection by stripping away incentives for police loyalty, and any apparent conflict between that statute nullifying contracts and other legislative provisions concerning maintenance of efficient police service must be resolved in favor of the latter.

The effect of sec. 8-1-7 is even more rank when it is considered that the Supreme Court of Illinois in the instant cause has applied it to prevent payment of step and longevity increases, notwithstanding the nature of this compensation as based on prior service and thus compensation for service in effect contracted under *prior* appropriation ordinances and not at all for *future* service. (See further discussion at Point II). The decision of the Supreme Court of Illinois therefore clearly serves to impair the obligation of the implied contract under which the police became entitled to the step and longevity increases, and as such clearly is improper under *Mississippi ex rel. Robertson* v. *Miller,* 276 U.S. 174 (1928), following *Fisk* v. *Jefferson Police Jury,* 116 U.S. 131 (1885).

Petitioners, in the courts below, have advanced several alternate theories in support of the existence of many forms of contractual obligations between the police officers and the City of Chicago. Since the Supreme Court of Illinois in its opinion did not explicitly rule that no such contractual obligation existed, but that it could not in that court's opinion, exist as a matter of law as precluded by Chapter 24, sec. 8-1-7, these arguments will not be raised in the instant Petition except by reference, but are reserved so that, upon the grant of the instant Petition by this Honorable Court, they can be raised on the appeal under the doctrine that this Honorable Court has jurisdiction to determine the nature and character of contractual obligations in cases involving the constitutional protection afforded by the Constitution of the United States to the obligation of a contract. *Citizens' Bank* v. *Parker,* 192 U.S. 73 (1904); *Vicksburg* v. *Vicksburg Water Works Co.,* 202 U.S. 453 (1906); *Louisiana R. & Na. Co.* v. *Behrman,* 235 U.S. 164

(1914); *Atlantic C.L.R. Co.* v. *Phillips,* 332 U.S. 168 (1947).

No motive raised in the instant cause by respondents in the form of Presidential Wage-Price Controls attempting to justify the impairment of the contract to pay step and longevity increases can be taken into account. *Carondelet Canal & Nav. Co.* v. *Louisiana,* 233 U.S. 362 (1914). This is true especially in the instant cause, because in fact no controls precluding payment of longevity and step increases were in effect at the time of the passage of the 1972 City of Chicago Appropriation Ordinance (See Statement of the Case and Appendix B—Findings of Fact).

Further, Petitioners preserve and present in Point IV of this Petition the contention that the 1972 appropriation ordinance did, in fact, contain a budgeted sum sufficient to cover the payment of the disputed step and longevity increases.

II.

THE APPLICATION IN THE INSTANT CAUSE BY THE SUPREME COURT OF ILLINOIS OF AN ILLINOIS STATUTORY SCHEME WHICH PLACES THE CHICAGO POLICE SUPERINTENDENT IN A POSITION TO PROMISE BENEFITS AND JOB CONDITIONS TO POLICEMEN AND THEREUPON PRECLUDES FULFILLMENT OF SUCH PROMISES, DESPITE THE POLICEMEN'S RELIANCE THEREON, IS IMPROPER AND FURTHERMORE CONSTITUTES A DENIAL OF DUE PROCESS TO PETITIONERS.

One of the ironic elements of the denial to the petitioners of the step and longevity increases which they were promised is the assumption by the Supreme Court of Illinois that there could have been no reliance for 1972

because the 1972 appropriation ordinance, adopted on December 10, 1971, gave notice that there would be no step or longevity increases in 1972.

The problem, of course, with this reasoning is that the reliance on a promise of step and longevity increases occurs long before the year in which they are to be granted, since such increases are based solely on amount of time served. "Under modern employment conditions, longevity often results in the accrual of rights to various fringe benefits that might be considered part of an employee's compensation." Note, 26 STAN. L. REV. 335, 362 (1974). Fringe benefits can be analyzed in market terms: The employee bargains for a lower present salary in exchange for the promise of future payment. When the time comes for payment of step and longevity increases, the services already have been performed. The employer is unjustly enriched if the employee does not collect his longevity payment. An employee actually earns the remuneration prior to any change in economic conditions. *See generally* note, *Pension Plans and the Rights of the Retired Worker,* 70 COLUM. L. REV. 909 (1970).

Not realizing its basic error with regard to the nature of step and longevity increases, the Supreme Court of Illinois, in basing its finding that there could have been no reliance on the part of the police officers because the appropriation ordinance was passed 20 days prior to the beginning of the year 1972, comes very close to espousing the doctrine that any hardship incurred by parties because of a lack of power in the municipality so to contract is "self-inflicted" because of "conclusively presumed knowledge" of the extent of the powers of a municipal corporation. The Supreme Court of Illinois' holding to this effect in this day is a serious departure from the due pro-

cess principles expressed almost twenty years ago by an Illinois Appellate Court in *Brown* v. *City of Evanston*, Ill., 123 N.E. 2d 850 (1st Dist. 1955), and is in conflict with the principles recently expressed by this Honorable Court in *Board of Regents* v. *Roth*, 408 U.S. 564 (1972) and *Perry* v. *Sinderman*, 408 U.S. 593 (1972). See also *Powell* v. *Jones*, Ill., 305 N.E.2d 166 (1973).

The passage of one ordinance among many, containing no clear and convincing manifestation that the appropriation for step and longevity increases had been cancelled (See Statement of Case), cannot be held to be sufficient notice so as to preclude reliance. That such summary and obfuscatory action on the part of a City Council can deprive police officers of their employment compensation rights certainly constitutes a denial of due process. The extensive and longstanding portrayals by the Police Superintendent in disseminating leaflets and otherwise representing the existence of Departmental step and longevity increases (See Statement of Case), much like the Faculty Guide in *Perry*, cannot be said not to have created reliance on the part of the officers! Substantial reliance can be induced by such recruitment techniques, *Ward* v. *Consolidated Foods Corp.*, 480 S.W. 2d 483 (Tex. Civ. App. 1972).

A municipal corporation should be held to a careful adherence to truth in its dealings and cannot by its representations or silence involve others in onerous engagements and then defeat the claims its own conduct has invited. *Hackett* v. *City of Ottawa*, 99 U.S. 86 (1878). A person's interest in a governmental benefit is a "property interest" subject to procedural due process protection where the claim of entitlement to the benefit is supported by the rules or practices of the agency

affording the benefit or by mutually explicit understandings. *Perry* v. *Sinderman*, 408 U.S. 593 (1972); *Morrissey* v. *Brewer*, 408 U.S. 471 (1972). Procedural due process contemplates "notice" and a hearing far different from that portrayed under the instant set of facts and herein sanctioned by the Supreme Court of Illinois. *Board of Regents* v. *Roth*, 408 U.S. 593 (1972).

For the Supreme Court of Illinois to take the position that longevity and step increases constitute future compensation implies a misunderstanding of the nature of such compensation. Furthermore, for that court to hold that twenty days of dubious notice to Petitioner that such increases would not be paid in 1972, without an opportunity for hearing or a showing of cause, was sufficient to prevent reliance on the part of the police officers is not only a gross distortion of fact but a serious denial of Petitioners' due process rights.

III.

THE ACTION OF THE CITY OF CHICAGO, IN CLASSIFYING DIFFERENTLY, WITHOUT VALID REASON, THOSE POLICEMEN REACHING THEIR NEXT STEP OR LONGEVITY CLASSIFICATION PRIOR TO AUGUST 14, 1971, FROM THOSE REACHING SUCH STEP AFTER THAT DATE, CONSTITUTES A DENIAL OF THE RIGHT TO EQUAL PROTECTION OF THE LAWS.

The City of Chicago arbitrarily cut off payment of step and longevity increases on August 15, 1971. It's reason, given in argument below, for this act, was to comply with Federal wage-price freeze regulations. Yet, the Federal government recognized the unfairness of arbitrarily denying step and longevity increases which had been agreed to prior to the August 14, 1971, wage-price freeze, and

on November 14, 1971, issued a ruling allowing the resumption of payment of longevity and automatic progression within a rate range according to the terms of estalished practices in existence prior to November 14, 1971, without regard to the 5.5% standard. (36 F.R. 21952).

Therefore, the City in fact had no valid reason for classifying differently those police reaching their next step or longevity classification prior to August 15, 1971, from those reaching such step after that date. As a result of the acts of the City, some policemen received rewards for long and faithful service if they happened to be "eligible" for step and longevity increases prior to the arbitrary cut-off date. Other members of the class, whose "eligibility" for the same compensation came after the arbitrary date, received no such increases.

Those who received the increases did the same work as those who did not receive the increases so that those in the prior class received more compensation than those in the latter class; and conversely, after the increases were granted to some and not to others, the inequities became even greater as those who received the increases continued to receive more compensation for the same work as those in the same Civil Service grade who did not receive the increases.

The plaintiffs do not contend that the City could not have eliminated step and longevity increases by an affirmative act, which was not contrary to the authorized acts and representations of the Police Department, and done in such manner as to protect rights already accrued. Thus, if the elimination had affected officers to be hired in the future, then at least arguably it would not have violated the principle of equal protection. However, such is not the present case.

The acts of state and local governments must be reasonable, not arbitrary, and must rest on some ground of difference having fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Eisenstadt* v. *Baird*, 405 U.S. 438 (1972). Accordingly, in *Mayflower Farms, Inc.* v. *Ten Eyck*, 297 U.S. 266 (1936), this Honorable Court held invalid, as arbitrary and unreasonable, a legislative act which applied differently as between those going into business before a certain date and those entering that same business after the date. While a state has broad powers when it comes to making classifications, it may not draw a line which constitutes an invidious discrimination against a particular class. *Levy* v. *Louisiana*, 391 U.S. 68 (1968).

The Supreme Court of Illinois, in its decision in the instant cause, did not reach the equal protection question although it had been raised on appeal. Had it considered this question, it would seem that the outcome clearly is controlled by *Lee* v. *Retirement Board of Policemen's Annuity and Benefit Fund of City of Chicago*, Ill., 201 NE 2d 361 (1964) in which an arbitrary cutoff date for certain pension benefits was declared to be unconstitutional under Section 22 of Article IV of the 1870 Illinois Constitution. The case concerned an amendment to the police pension statute, the amendment stating that in computing prior service for the purposes of pensions, consideration was to be given for time spent in the military if the policemen had been on the eligibility list for policemen that existed prior to December 7, 1943. Other eligibility lists had come into existence from civil service exams after December 7, 1943 but no policeman from those later lists was entitled to claim credit for time spent in the military.

The amendment was unconstitutional on the grounds that there was no reasonable basis for treating those policemen who were on the pre-December 7, 1943 eligibility list differently from other policemen with military service who were appointed from subsequent eligibility lists. *See also People ex rel. Jendrick* v. *Allman*, Ill., 71 NE 2d 44 (1947).

If the City deigns to restore step and longevity increases for the future, it is impossible to equalize the increases so that a man whose last increase became due in the year 1972 will ever be compensated for the "freeze." Merely subtracting 16½ months time from every police officer's service record does not operate upon all members of the class equally. From an economic point of view, some members of the class have received far greater compensation than others for the same work over the same period of time, even though all officers have apparently lost a service credit. A law which is non-discriminatory on its face may be grossly discriminatory in its operation. *Griffin* v. *People of State of Illinois*, 351 U.S. 12, 17 n.11 (1956).

The effect of the defendant's classification was to substantially increase the compensation of those who completed the requisite time period prior to August 14, 1971, and to deprive those persons in the same classification who completed the requisite time period after August 14, 1971, of substantial compensation by the use of a purely arbitrary cut-off date which has no basis whatsoever in law or in fact. Such an attempt on the part of the City to deny step and longevity increases to some (but not all) policemen was grossly discriminatory and in violation of the equal protection clauses of the Federal and State Constitutions.

IV.

THE SUPREME COURT OF ILLINOIS, IN REVERSING AND REMANDING THIS CAUSE TO THE CIRCUIT COURT BELOW WITH DIRECTIONS TO DISMISS THE ACTION, VIOLATED THE PROVISIONS OF THE ILLINOIS CIVIL PRACTICE ACT CONCERNING SUMMARY JUDGMENTS AND GENERALLY WENT OUTSIDE THE PROCEDURES AS TO THE SCOPE OF REVIEW OF SUMMARY JUDGMENTS AND AS TO CASES WITH AGREED FINDINGS OF FACT.

In the Circuit Court of Cook County, both parties moved for summary judgment, and the trial court entered a decree granting the Petitioners' motion, thereby ruling in favor of the Plaintiffs-Petitioners and granting summary judgment against the Defendants-Respondents.

Thereupon, a decree was prepared which included findings of fact (See Appendix B), and this decree was approved by both parties and duly entered so as to form the basis for the appeal.

The nature of the appeal, corroborated by the statements of the parties, indicates that there is no dispute as to the facts. Accordingly, the entire framework of the appeal to the Supreme Court of Illinois could only have rested upon the decree of the court below. (See Appendix B). As the Decree states in one relevant portion:

> Both the plaintiffs and the defendants filed Motions for Summary Judgment, both stating in essence that "there is no material issue of fact left unresolved that would prevent the court from rendering a decree at this time."
>
> Accordingly, the court has relied upon the pleadings, interrogatories and affidavits heretofore filed in this action in making certain determinations of fact.

Among the Circuit Court's findings of fact is the following:

> This court finds that the 1972 city budget adopted by the City Council of the City of Chicago in December 1971 contained an appropriation adequate and sufficient to fund all instep and longevity increases due to Chicago policemen during 1972.

The holding of the Supreme Court of Illinois applying Illinois Revised Statutes, 1971, Chapter 24, sec. 8-1-7, to the effect that any contract made without a prior appropriation is null and void can only be predicated on a finding of fact contrary to that of the Circuit Court! To conclude that as a matter of law the Petitioners were not entitled to their step and longevity increases, the Supreme Court had to assume or find, contrary to the Circuit Court's decree based on the parties' agreed-upon findings of fact, that money was not sufficiently appropriated in the 1972 budget to permit payment of the increases. As such, the Supreme Court of Illinois' Mandate reversing the judgment of the Circuit Court and remanding the cause to that court *with directions to dismiss the action* is improper.

A proper course for the Supreme Court of Illinois to have followed would have been a remandment to the Circuit Court for trial concerning the facts of the budget appropriations. This course has been followed many times by the Supreme Court of Illinois. One recent example is *Korbus* v. *Formfit Company*, Ill., 221 N.E. 2d 633 (1966), in which the Circuit Court had granted summary judgment for all defendants, and the Supreme Court held that the pleadings, affidavit and depositions raised questions of fact, thus precluding summary judgment. The very purpose, under the Illinois

Civil Practice Act, Illinois Revised Statutes, 1971, Chapter 110, sec. 57 and the Illinois Supreme Court Rules 191 & 192 (Illinois Revised Statutes, 1971, Chapter 110A, sec. 191 & 192), of summary judgment procedure is to permit a court to determine if there is any genuine issue of fact. The Supreme Court of Illinois has violated its own rules by predicating its disposition of the appeal from a summary judgment on an issue of fact that it has determined in a manner contrary to that found by the Circuit Court and agreed upon by the parties.

On review of a summary judgment, it is not the function of the reviewing court to speculate as to ultimate findings of fact. *Fortner Enterprises, Inc.* v. *U.S. Steel Corp.,* 394 U.S. 495 (1969). The only question before the Illinois Supreme Court was whether or not, as a matter of law, the judgment appealed from was correct. The factual grounds on which the court below proceeded is not a proper subject of inquiry. *McClung* v. *Silliman,* 19 U.S. 598 (1821); *Davis* v. *Pachard,* 31 U.S. 41 (1832).

Where the trial court judge makes a voluntary report of "all the material facts," for the purposes of appeal, and these are agreed upon by the parties, the appellate court may not add to any facts so found or change such facts. *Raimond* v. *Parish of Terrebonne,* 132 U.S. 192 (1889); *Wilson* v. *Merchant's Loan & Trust Co.,* 183 U.S. 121 (1901). The only question open is whether, solely on the findings reported, the judgment or decree was rightly entered. *Jose* v. *Lyman,* 316 Mass 271, 55 N.E. 2d 433 (1944); *Greenberg* v. *Flaherty,* 306 Mass. 95, 27 N.E. 2d 683 (1940); *Saunders* v. *Saunders,* 140 Conn. 140, 98 A. 2d 815 (1953).

Petitioner in the instant case contends vigorously that the original findings of fact by the Circuit Court are

correct as to the existence of an amount in the 1972 appropriated budget sufficient to pay the step and longevity increases. Petitioner contends further that the respondents, having agreed for the purposes of appeal to the findings so made, have waived their right to re-open the factual issue. *Suydam* v. *Williamson,* 61 U.S. 427 (1868). The decision of the Supreme Court of Illinois is improper in that it predicates its purported finding "as a matter of law" on a re-finding of facts contrary to those found by the Circuit Court and agreed to by the parties. By violating its own rules the Supreme Court of Illinois also violated the Petitioners' right to due process of law.

CONCLUSION

The Petitioners submit that the violation of their constitutional rights in the proceedings below has produced a manifest injustice to thousands of Chicago Policemen in depriving them of promised benefits for which they had labored many years. For the reasons stated, the Petitioners respectfully pray that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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The participation of Lawrence Wolf Levin, Attorney at Law, in the preparation of this Petition is gratefully acknowledged.

APPENDIX A

SUPREME COURT OF ILLINOIS

The Chicago Patrolmen's Association, a not-for-profit corporation, etc., et al., etc.,
Appellees

No. 45938

vs.

The City of Chicago, a municipal corporation, et al., ect.,
Appellants

Appeal from Circuit Court Cook County

Docket No. 45938—Agenda 24—January, 1974.

THE CHICAGO PATROLMEN'S ASSOCIATION *et al.*, Appellees, v. THE CITY OF CHICAGO *et al.*, Appellants.

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

This is a class action by certain individual members of the City of Chicago Police Department and by the Chicago Patrolmen's Association against the City of Chicago. The purpose of the action is to compel the City to pay to the police officers certain "step" and "longevity" salary increases for the year 1972. Both parties moved for summary judgment, and the trial court entered a decree ordering that the City forthwith pay to each member of the police force who would have been entitled to step or longevity increases during 1972 the sum of money to which he would have been entitled. The decree also ordered that the entire period of time from August 14, 1971, to and including December 31, 1972, was to be counted by the defendant City in determining the step and

longevity position of each member of the Chicago Police Department who was employed during all or any portion of that period. The court retained jurisdiction for the purpose of setting attorney's fees. The City appealed, and under Rule 302(b) it was ordered that the appeal be transferred to this court.

The question in the case is whether as a matter of law the plaintiffs were entitled to step or longevity increases during the year 1972.

For a number of years prior to 1972, the annual appropriation ordinances of the City had provided for specific starting wages for the various job classications within the civil service system, for "step" increases within each job classification based upon months of service in that classification, and for additional "longevity" increases as individual employees reach the maximum pay range within their classification. The appropriation ordinance for the year 1971 provided for such increases, and they were paid to those City employees who qualified for them until August 15, 1971. On that date, the President of the United States, pursuant to the Economic Stabilization Act of 1970 (Pub. L. No. 91—379, 84 Stat. 799), issued Executive Order No. 11615, which froze all prices, rents, wages and salaries for a period of 90 days, and thereby prevented the payment of step and longevity increases to those who qualified for them on and after August 15, 1971.

Thereafter, on October 15, 1971, the President issued an Executive Order which established Phase II of the Wage and Price Freeze and also established the Cost of Living Council. That Council established guidelines which limited salary increases to 5.5%. The appropriation ordinance of the City for the year 1972 was passed on December 10, 1971, and it increased the salaries of civil service employees by 5 to 5.5% based upon the salaries they actually received in 1971. It did not contain appropriations for step or longevity increases for any City employees.

On January 14, 1972, the President issued an Executive Order which permitted a retroactive payment of increases which were scheduled to be paid during Phase I in accordance with a pay practice which had been established prior to August 15, 1971, when Phase I had gone into effect. On February 2, 1972, after receiving an official ruling under the President's Executive Order, the City paid all step and longevity increases that had been scheduled and appropriated for under the 1971 appropriation ordinance.

The critical fact in this case is that the 1972 appropriation ordinance of the City made no provision for the step and longevity increases which the plaintiffs seek to recover. The critical legal consideration is found in section 8-1-7 of the Illinois Municipal Code, which provides:

> "No contract shall be made by the corporate authorities, or by any committee or member thereof, and no expense shall be incurred by any of the officers or departments of any municipality, whether the object of the expenditure has been ordered by the corporate authorities or not, unless an appropriation has been previously made concerning that contract or expense. Any contract made, or any expense otherwise incurred, in violation of the provisions of this section shall be null and void as to the municipality, and no money belonging thereto shall be paid on account thereof." Ill. Rev. Stat. 1971, ch. 24, 8-1-7.

The plaintiffs nevertheless base their right to recover upon an alleged contractual obligation and upon the doctrine of equitable estoppel. As a predicate for these contentions they seek first to establish that the relationship of a police officer to the City differs from that of its other employees. Indeed, the relationship of police officers is characterized by the plaintiffs as "a very special one, a kind of super contract," and it is pointed out that the appropriation for the police department is customarily set out in the appropriation ordinance in a schedule separate

from those of other City departments. We do not see, however, that any particular rights on the part of police officers attach by reason of this circumstance, any more than special rights of employees of other departments of the City government accrue by reason of the fact that the appropriation for those departments is stated separately from that of members of the police department.

There are respects, of course, in which the relationship of a police officer to the City government differs from that of other employees. Police officers must meet qualifications and perform duties not required by other City employees. They are subject to disciplinary procedures that are not applicable to all other employees. The same may be said, however, of doctors, lawyers, nurses, architects and engineers employed by the City. In any respect that is relevant to this case, it cannot be said, as the plaintiffs would say, that the relationship of a police officer "is a very special one, a kind of super contract, if you will, in that the rights and duties of the parties are set by law and may not be changed by agreement but only by *affirmative* act on the part of the governmental authority."

Based upon the special relationship which the plaintiffs visualize, they assert a quasi-contractual relationship to support a recovery. They say: "The relationship of the defendant, through its agent, the Police Superintendent, to its police officers, the plaintiffs, is a very special one, which if not a contract in the formal sense, can and does give rise to quasi-contractual or implied contractual obligations." The contention seems to be that the police officers relied upon representations of the Superintendent of Police and that a quasi-contractual relationship arose from those representations and that reliance. There are many difficulties with this contention. The Superintendent of Police did not fix the salary of police officers, and he was not authorized to make representations concerning the salary to be paid to them in the future. Any reliance upon his representations would have been unwarranted, but in this case there can have been no reliance, for the 1972 appropriation ordinance, adopted on December 10, 1971,

gave notice that there would be no step or longevity increases in 1972.

The controlling legal principles are familiar. In *Gathemann* v. *City of Chicago* (1914), 263 Ill. 292, 298, the court said:

> "The contention of appellant that he is entitled to extra compensation because of the promise of the chairman of the finance committee cannot be sustained. Promises to pay a municipal officer an extra fee or sum beyond that fixed by law are not binding upon the municipality, even though he rendered the services and exercised a greater degree of diligence than could legally have been required of him. I Dillon on Mun Corp. (5th ed.) sec. 427; *City of Decatur* v. *Vermillion, supra* [77 Ill. 315]; *May* v. *City of Chicago, supra* [222 Ill. 595]
>
> A further reason exists why appellant cannot recover in this case. The record shows that no appropriation for the appellant's overtime work as foreman was made. It was impossible, therefore, for city officials to create a liability against the city for that work. *May* v. *City of Chicago, supra,* and cases cited."

Under section 8-1-7 of the Municipal Code (Ill. Rev. Stat. 1971, ch. 24, par. 8-1-7), any contract made without a prior appropriation is null and void. There can be no equitable estoppel because there was no justified reliance upon the part of the plaintiffs. (*Levin* v. *Civil Service Com. of Cook County* (1972), 52 Ill.2d 516, 524-5.) Under the settled law of this State a public employee does not have a property interest in the continuance of any specific rate or method of compensation. *Gathemann* v. *City of Chicago* (1914), 263 Ill. 292.

The judgment of the circuit court of Cook County is reversed and the cause is remanded to that court with directions to dismiss the action.

Reversed and remanded, with directions.

APPENDIX B

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT —
CHANCERY DIVISION

THE CHICAGO PATROLMEN'S ASSOCIATION A Not-For-Profit Corporation, in behalf of various members of the Chicago Police Department and RICHARD GAFFNEY, BERNARD B. O'REILLY and ROBERT A. ROSSI, members of the Chicago Police Department,
Plaintiffs,

v.

THE CITY OF CHICAGO, a Municipal Corporation and DAVID STAHL, CITY COMPTROLLER,
Defendants.

No. 72 CH 436

DECREE

This action was commenced by the Chicago Patrolmen's Association on behalf of all members of the Chicago Police Department and by three individual Chicago policemen against the City of Chicago and David Stahl, City Comptroller. Plaintiffs complained of an action by the Municipal government denying instep and longevity increases to otherwise entitled policemen, allegedly based on the 1971 wage price freeze. Both the Plaintiffs and the Defendants filed Motions for Summary Judgment, both stating in essence that "there is no material issue of fact left unresolved that would prevent the court from rendering a decree at this time."

Accordingly, the court has relied upon the pleadings, interrogatories and affidavits heretofore filed in this action in making certain determinations of fact.

FINDINGS OF FACT

This court finds that the 1972 city budget adopted by the City Council of the City of Chicago in December 1971 contained an appropriation adequate and sufficient to fund all established instep and longevity increases due to Chicago policemen during 1972.

The court further finds that the Police Department had established the practice of distributing booklets and other printed materials to members of the police department and prospective candidates to the Chicago Police Department seting forth the pay practices of the City of Chicago toward policemen, which contained specific reference to instep increases after 6 months, 18 months, 30 months and 42 months on the job and longevity increases after 5 and 10 years on the job in years prior to 1972.

The court further finds that members of the Plaintiff class relied upon these publications of the City of Chicago.

The court further finds that this is an appropriate class action and the proper Plaintiff class is all members of the Chicago Police Department adversely affected by the actions of the Defendants.

The court further finds that the promulgations of the Federal Pay Board acting under the Economic Stabilization Act specifically authorized established grade and longevity increases as permitted under and consistent with the Board's pay practices.

The court further finds that during 1972 the Defendants wrongfully withheld instep and longevity increases from members of the Chicago Police Department and from August 15, 1971 to December 31, 1972 wrongfully failed to count time elapsed during such period against the time requirements for such established instep and longevity pay increases.

ORDER

Based on the foregoing findings of fact and the respective Motions for Summary Judgment, the court having read the respective Memoranda of Law and having heard and considered the oral arguments of counsel, it is Ordered, Adjudged And Decreed:

1. That the City of Chicago shall forthwith pay to each and every member of the Chicago Police Department who shall have been entitled to established instep and longevity increases during 1972 all such sums of money to which each of them shall have been entitled under such established practices.

2. That the entire period of time from August 14, 1971 to and including December 31, 1972 shall be counted in determining the instep and longevity position of each member of the Chicago Police Department who shall have been employed as such during all or any portion of such period of time, and that there shall be no discontinuity in such time computation caused by the wage price freeze.

3. That any benefits denied any member of the Chicago Police Department by virtue of such discontinuity of time computation shall forwith be paid to each member of the Chicago Police Department entitled to such benefits.

4. That this court shall retain jurisdiction in this matter for the purpose of setting attorneys' fees and costs and for the purpose of supervising and assisting in the compliance with this Decree.

Dated at Chicago, Illinois this 24th day of May, 1973.

/s/ Daniel A. Covelli
Daniel A. Covelli, Judge of
the Circuit of Cook County

APPENDIX C

United States Constitution, Art. 1 Section 10

Section 10. No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainer, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

United States Constitution, Amendment XIV, Sec. 1

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Revised Statutes (1971), Chapter 24

§ 8-1-7. Contractual liabilities—Limitation

No contract shall be made by the corporate authorities, or by any committee or member thereof, and no expense shall be incurred by any of the officers or departments of any municipality, whether the object of the expenditure has been ordered by the corporate authorities or not, unless an appropriation has been previously made concerning that contract or expense. Any contract made, or any expense otherwise incurred, in violation of the provisions of this section shall be null and void as to the municipality, and no money belonging thereto shall be paid on account thereof. However, pending the passage of the annual appropriation ordinance for any fiscal year, the corporate authorities may authorize heads of departments or other separate agencies of the municipality to make necessary expenditures for the support thereof upon the basis of the appropriations of the preceding fiscal year. However, if it is determined by two-thirds vote of the corporate authorities then holding office at a regularly scheduled meeting of the corporate authorities that it is expedient and in the best public interest to begin proceedings for the construction of a needed public work, then the provisions of this section shall not apply to the extent that the corporate authorities may employ or contract for professional services necessary for the planning and financing of such public work.

This section shall not apply to municipalities operating under special charters.

As amended 1967, Aug. 31, Laws 1967, p. 3425, § 1.

Illinois Revised Statutes (1971), Chapter 110A

§57. (Civil Practice Act, § 57). Summary judgments and decrees

(1) For plaintiff. Any time after the opposite party has appeared or after the time within which he is required to appear has expired, a plaintiff may move with or without affidavits for a summary judgment or decree in his favor all or any part of the relief sought.

(2) For defendant. A defendant may, at any time, move with or without supporting affidavits for a summary judgment or decree in his favor as to all or any part of the relief sought against him.

(3) Procedure. The opposite party may prior to or at the time of the hearing on the motion file counter affidavits. The judgment or decree sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment or decree as a matter of law. A summary judgment or decree, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(4) Form of affidavits. The form and contents of and procedure relating to affidavits under this section shall be as provided by rule.

(5) Affidavits made in bad faith. If it appears to the satisfaction of the court at any time that any affidavit presented pursuant to this section is presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing it to pay to the other party the amount of the reasonable expenses which the filing of the affidavit caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt. 1933, June 23, Laws 1933, p. 784, art. 7, § 57; 1941, July 21, Laws 1941, vol. 2, p. 464, § 1; 1955, July 19, Laws 1955, p. 2238, § 1.

ILLINOIS REVISED STATUTES (1971),

Chapter 110A

§ 191. (Supreme Court Rule 191). Affidavits in Proceedings Under Sections 57, 48 and 20(2) of the Civil Practice Act

(a) Requirements. Affidavits in support of and in opposition to a motion for summary judgment under section 57 of the Civil Practice Act, affidavits submitted in connection with a motion for involuntary dismissal under section 48 of the Civil Practice Act, and affidavits submitted in connection with a special appearance to contest jurisdiction over the person, as provided by section 20(2) of the Civil Practice Act, shall be made on the personal knowledge of the affiants; shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; shall have attached thereto sworn or certified copies of all papers upon which the affiant relies; shall not consist of conclusions but of facts admissible in evidence; and shall affirmatively show that the affiant, if sworn as a witness, can testify competently thereto. If all of the facts to be shown are not within the personal knowledge of one person, two or more affidavits shall be used.

Amended and effective July 1, 1971.

* * * *

§ 192. (Supreme Court Rule 192). Summary Judgments —Multiple Issues

When the entry of a summary judgment will not dispose of all the issues in the case, the court may, as the justice of the case shall require, either (1) allow the motion and postpone the entry of judgment thereon; (2) allow the motion and enter judgment thereon; or (3) allow the motion, enter judgment thereon, and stay the enforcement pending the determination of the remaining issues in the case. If a party resisting the entry of a summary judgment relies upon an affirmative demand against the moving party for an amount less than the latter's demand, judgment for the difference may be entered and enforced.

Chap. 11-6. Subject to the rules of the department and the instruction of the Board, said Superintendent shall have the power and duty: (1) to administer the affairs of the department as its chief administrative officer; (2) to organize the department with the approval of the Board; (3) to make appointments, promotions, transfers of and to take disciplinary action against employees of the department other than the secretary of the Board; (4) to appoint, discharge, suspend or transfer the employees of the department other than the secretary of the Board and to issue instructions to said employees other than the secretary in the line of their duties. (3) and (4) are subject to the civil service provisions; (5) to expend the funds to the department in accordance with the provisions of the budget appropriations; (6) to recommend to the Board an annual departmental budget covering the anticipated revenues and expenditures of the department conforming as far as practicable to the forms and dates provided for in relation to the general city budget; (7) to certify all expenditures of the department to the City Comptroller; and (8) to exercise such further powers in the administration of the department as may be conferred upon him by the Board. [Amend. Coun. J. 3-2-60, p. 2059.]

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1880

THE CHICAGO PATROLMEN'S ASSOCIATION, A NOT-FOR-PROFIT CORPORATION, IN BEHALF OF VARIOUS MEMBERS OF THE CHICAGO POLICE DEPARTMENT and RICHARD GAFFNEY, BERNARD B. O'REILLY and ROBERT A. ROSSI, MEMBERS OF THE CHICAGO POLICE DEPARTMENT,
Petitioners,

vs.

THE CITY OF CHICAGO, A MUNICIPAL CORPORATION, and DAVID STAHL, CITY COMPTROLLER,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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THE CITY OF CHICAGO, A MUNICIPAL CORPORATION, and DAVID STAHL, CITY COMPTROLLER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The order of the Circuit Court of Cook County is reproduced in Appendix B to the Petition. The opinion of the Supreme Court of Illinois is reproduced in Appendix A of the Petition and is reported at 56 Ill. 2d 503.

JURISDICTION.

The jurisdictional requisite is incorrectly set forth in the Petition. The Petition invokes the jurisdiction of this Court pursuant to 28 U. S. C. § 1254 which provides for the review of decisions of federal courts of appeal. For purposes of this Brief, Respondents will treat the Petition as if jurisdiction of the Court had been invoked pursuant to 28 U. S. C. § 1257(3).

QUESTION PRESENTED.

Whether Petitioners are entitled to step and longevity increases for the year 1972 which were not provided for in the 1972 budget of the City of Chicago.

STATEMENT.

It is not disputed that for a number of years prior to 1972, civil service personnel of the City of Chicago were paid pursuant to an annual appropriation ordinance passed by the City Council of the City of Chicago. These annual ordinances provided for specific starting wage scales each year for various job classifications within the civil service system, for various step increases within the job classification based upon months of service within each classification and for additional longevity increases for individual members of the civil service after they reached a maximum pay range within their classification. Such a plan was adopted and appropriated for by the City Council in the appropriation ordinance for 1971.

The step and longevity increases were granted and paid for the year 1971 to those employees who qualified for said increases up to August 15, 1971. On that day, the President of the United States, pursuant to the Economic Stabilization Act of 1970 (P. L. 91-379, 84 Stat. 799) issued Executive Order No. 11615 which froze all prices, rents, wages and salaries for

a period of 90 days, thereby preventing those qualifying for the step and longevity increases as of August 15, 1971 from being paid the increases.

On October 15, 1971, the President issued an Executive Order establishing Phase II of the wage price freeze and the Cost of Living Council. The cost of Living Council set forth guidelines which limited any salary increase to no more than 5.5%. On December 10, 1971, the City Council passed its 1972 appropriation ordinance, and in keeping with the dictates of Phase II, increased the salaries of civil service employees by 5 to 5.5% based on the salaries they received in 1971. There was no appropriation for step and longevity increases for 1972.

On January 13, 1972, the President issued an Executive Order, and on January 27, 1972 the Pay Board issued regulations pursuant to the Economic Stabilization Act which permitted the retroactive payment of increases scheduled to be paid during Phase I pursuant to a pay practice established prior to the inception of Phase I. On February 2, 1972, the City, upon receiving an official ruling regarding the President's Order and the Pay Board's regulation, paid in a lump sum all step and longevity increases that were scheduled and appropriated for payment under the 1971 appropriation ordinance and which had been frozen by Phase I. Since there was no appropriation for step and longevity increases for 1972, no such increases were paid.

The instant case, a class action, was commenced by the filing of the complaint in the Chancery Division of the Circuit Court of Cook County, Illinois, on January 25, 1972. Plaintiffs (Petitioners) represented members of the Chicago Police Department with forty-two months or less at the time of the filing of the complaint.

The complaint contained one count sounding in contract and another count seeking relief on an estoppel or quasi-contract theory. The relief sought included an order directing Respondents to pay to Petitioners accrued step and longevity increases for

1971 and 1972 step and longevity increases to which Petitioners alleged they were entitled.

On November 3, 1972, the trial court entered an order striking that portion of the complaint pertaining to 1971 step and longevity increases as moot since these increases were granted after the filing of the suit. Respondents filed their answer and both parties moved for summary judgment. The trial court granted Petitioners' motion for summary judgment and ordered the Respondents to pay step and longevity increases for 1972 to every member of the Chicago Police Department entitled to such increases and to include the period of time from August 14, 1971 to December 31, 1972 in determining the step and longevity position of each member of the Chicago Police Department. Respondents filed notice of appeal to the Illinois Appellate Court and on June 14, 1973, Justice Thomas E. Kluczynski entered an order transferring the cause to the Supreme Court. The Illinois Supreme Court held that in the absence of an appropriation, the Petitioners were not entitled to step and longevity increases for 1972 and remanded the cause to the Circuit Court with directions to dismiss the action.

REASONS FOR DENYING THE WRIT.

There is no special and important reason presented in the Petition to warrant review by this Court on certiorari. The Illinois Supreme Court has not decided a federal question of substance, but rather, has based its decision in this case on well-established principles of Illinois law.

I.

No Substantial Federal Question Was Raised in a Proper and Timely Manner in the Illinois Courts.

Petitioners present four reasons why a writ of certiorari should issue to review the judgment and opinion of the Illinois Supreme Court: (1) Chapter 24, paragraph 8-1-7 of the Illinois

Revised Statutes is, as applied to the Petitioners, unconstitutional, as a violation of the constitutional provision forbidding the impairment of contracts; (2) the City's failure to grant to Petitioners step and longevity increases for 1972 deprives them of due process of law; (3) the City's failure to grant to Petitioners step and longevity increases for 1972 amounts to a denial of equal protection of the law; (4) the Illinois Supreme Court has violated the Illinois Civil Practice Act.

Petitioners have failed to comply with Rule 23(f) of this Court which provides that if a review of the judgment of a state court is sought, the statement of the case must specify the stage in the proceedings in the court of the first instance and in the appellate court at which the federal questions sought to be reviewed were raised. It is essential to the jurisdiction of the Supreme Court under 28 U. S. C. § 1257 that a substantial federal question have been properly raised in the state court proceeding. *Godchaux Co.* v. *Estopinal,* 251 U. S. 179 (1919).

The record clearly indicates that the issues in this case consistently have been framed in terms of the Petitioners' rights under Illinois law. In the complaint, Petitioners based their right to step and longevity increases on the basis of a contract, or in the alternative, a promissory estoppel theory. The complaint contained no reference to any provision of the United States Constitution. The decision of the Circuit Court of Cook County was based entirely on that court's interpretation of Illinois law. After determining that the 1972 budget provided for sufficient funds to pay the sought after increases, the trial court held that the Petitioners were entitled to said increases on a general detrimental reliance theory (Petition, Appendix B, page 7a). Similarly, Justice Walter V. Schaefer, who delivered the judgment of the Illinois Supreme Court, based the opinion entirely on Illinois substantive law when he ruled that in the absence of an appropriation, Petitioners were not entitled to step and longevity increases. No federal question was considered.

An examination of the record reveals that Petitioners completely failed to raise grounds one and four of their Petition in any Illinois proceeding. At no point did Petitioners allege that Chapter 24, paragraph 8-1-7 of the Illinois Statutes is unconstitutional as applied in this case. In addition, Petitioners raise here for the first time the applicability of the Illinois summary judgment law to the proceedings. It is essential that any issue sought to be reviewed on writ of certiorari have been presented to the state court with fair precision. It is well settled that issues which are not raised in the state court proceeding are not open to question on petition for certiorari. *Ellis* v. *Dixon,* 349 U. S. 458 (1954). In the instant case, Petitioners' issues one and four were never raised prior to the filing of the Petition. Moreover, Justice Schaefer's opinion never considers these or any other federal issues, but deals only with the Illinois law which is applicable to the case. If the state court does no more than discuss the interpretation of state law or statutes, without considering such interpretation in the light of federal issues, the Supreme Court cannot consider the federal points. *Beck* v. *Washington,* 369 U. S. 541 (1961).

Points two and three, based on the due process and equal protection guarantees of the Constitution, were not relied upon in Petitioners' complaint as requiring the payment of step and longevity increases. Rather, the theory of the pleadings was based on Illinois contract and quasi-contract law. Due process and equal protection issues were briefed in the Illinois Supreme Court, but that court did not consider these questions. The Petition fails to show that Petitioners properly raised due process and equal protection issues in the trial court.

The Illinois rule is that it is the duty of a person, whenever he regards his constitutional rights as invaded, to object at the earliest fair opportunity, and the failure to do so amounts to a waiver of the right. *Pennsylvania R. Co.* v. *Illinois Brick Co.,* 297 U. S. 447, 462-3 (1935); *Hulbert* v. *Chicago,* 202 U. S. 275, 80 (1905); *Jewel Tea Co.* v. *Rowe,* 414 Ill. 495 (1953).

Where the state high court is silent on the federal question, it may be assumed, unless the Petition affirmatively shows otherwise, that the silence is due to a procedural deficiency. *Bailey* v. *Anderson,* 326 U. S. 203, 206-7 (1945). Absent such a showing here, it may be assumed that the federal issues were not properly raised at the trial level and therefore were not considered by the Illinois Supreme Court. This is fatal to review of any of the issues in this forum. *Id.* Moreover, it appears that Petitioners' fourth issue, whether the Illinois Supreme Court properly applied the state summary judgment procedure, is essentially an issue of state law of which the Illinois Supreme Court is the final arbiter.

II.

The Decision of the Illinois Supreme Court Is Based on Nonfederal Grounds.

It is a familiar rule that where the decision of the state court is deemed to rest upon a nonfederal ground which adequately supports the state court judgment, such state court judgment is not open to review by the Supreme Court. *Murdock* v. *Memphis,* 20 Wall. 590, 22 L. Ed. 429 (1874). Even if a federal claim was properly asserted, if the state Supreme Court decides the case entirely on a nonfederal ground, the decision on nonfederal grounds is a bar to further review by this Court. *Wood* v. *Chesborough,* 228 U. S. 672 (1913). There must be a substantial basis for the state court ruling, and consistency with prior decisions is a good indication that the opinion is based on sufficient state grounds so as to preclude review in the Supreme Court. *Fox River Paper Co.* v. *Railroad Comm's,* 274 U. S. 651 (1926).

The Illinois Supreme Court's holding that Petitioners have no enforceable right to step and longevity increases for 1972 is based on well-established Illinois law. As Justice Schaefer commented, "The controlling legal principles are familiar."

(56 Ill. 2d at 507, Petition, page 5a.) Justice Schaefer then ably summarized the statutory and case law which governs the right of municipal employees to salaries over and above those that are appropriated. It is respectfully submitted that the decision of the Illinois Supreme Court is based on adequate nonfederal grounds. It is clearly correct and is consistent with a long line of Illinois decisions which deal with the same issue. Therefore, there is no useful purpose to be served by review of the case by this Court.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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No. 73-1880

In the
Supreme Court of the United States
OCTOBER TERM, A.D. 1973

THE CHICAGO PATROLMEN'S ASSOCIATION, a Not-for-Profit Corporation, in Behalf of Various Members of the CHICAGO POLICE DEPARTMENT and RICHARD GAFFNEY, BERNARD B. O'REILLY and ROBERT A. ROSSI, Members of the Chicago Police Department,

Petitioners,

vs.

THE CITY OF CHICAGO, a Municipal Corporation, and DAVID STAHL, City Comptroller,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois.

REPLY BRIEF OF PETITIONERS

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IN THE
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No. 73-1880

THE CHICAGO PATROLMEN'S ASSOCIATION, a Not-for-Profit Corporation, in Behalf of Various Members of the CHICAGO POLICE DEPARTMENT and RICHARD GAFFNEY, BERNARD B. O'REILLY and ROBERT A. ROSSI, Members of the Chicago Police Department,

Petitioners,

vs.

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Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Illinois.

REPLY BRIEF OF PETITIONERS

The City of Chicago, in its opposing Brief omits the important fact that on November 1, 1971, the Federal Pay Board issued an interpretation permitting restoration of longevity and related wage increases. This interpretation was issued prior to the Chicago City Council's passing

its appropriation ordinance for the year 1972. The City of Chicago also glosses over the fact that the trial court found that the 1972 City of Chicago appropriation ordinance as passed, in fact, contains an amount of appropriation sufficient to allow the payment of step and longevity increases to Chicago police officers. Both of these matters are correctly presented in the Petitioners' original Petition for Writ of Certiorari. These are important considerations and should be taken into account by this Honorable Court in passing on the Petition.

The Respondents correctly treat the Petition as invoking jurisdiction pursuant to 28 U.S.C., Section 1257(3), but incorrectly assert that this Honorable Court should not consider the Petition on jurisdictional grounds. It is the Petitioners' contention that the issues raised throughout the course of this litigation are not controlled by Illinois law but are issues of constitutional magnitude. Contrary to what Respondents would have this Court believe, Petitioners have raised these important and fundamental constitutional questions throughout the course of the litigation in this cause, beginning with their Motion for Summary Judgment filed with the trial court on April 24, 1973, which is set forth in full in Appendix A to this Brief.

The importance and substantiality of the questions presented have not been denied. The action of the City of Chicago and of the Illinois Courts in upholding impairment of contracts should not be permitted, particularly when such action concerns maintenance of a police force adequate to protect the rights of citizens. During the course of the proceedings, the validity of any State of Illinois statute or Chicago Municipal Ordinance which by its application by a State agency, government or court im-

pairs rights, privileges, or immunities raises a substantial federal question. See *Live Oak Water Users' Ass'n.* v. *Railroad Commission,* 269 U.S. 354 (1925); *Virginia* v. *Imperial Coal Sales Company,* 293 U.S. 15 (1934). In the instant case, the jurisdiction of this Honorable Court is claimed in that federal questions have arisen in the course of these proceedings from averments so distinct and positive as to place it beyond question that the Petitioner has at all times intended to assert a federal right. *Oxley Stave Co.* v. *Butler County,* 166 U.S. 648 (1897). Even when interpreted in that light respondent acknowledges in its brief as proper, the failure of the Illinois Supreme Court to deal with the constitutionality of applying the statutes in question constitutes, at best, mere evasion of Petitioners' constitutional claims. *Rogers* v. *Alabama,* 192 U.S. 226 (1904).

It is the Petitioners' contention, as it has been throughout the course of the instant proceedings, that any "non-federal" questions raised by the instant dispute cannot be considered apart from the constitutional grounds which have been raised by Petitioners, and that the "non-federal" grounds are not adequate to support the judgment of the Illinois Supreme Court. In *Terminiello* v. *Chicago,* 337 U.S. 1, (1949), this Honorable Court held it could consider the constitutionality of an ordinance where it has been construed by the court in a constitutionally prohibited manner.

Two major questions are always implicit in every State court case brought to the United States Supreme Court where, as in the instant case, both federal and state issues are involved. The first question is whether the State court judgment is based exclusively upon a

non-federal ground. The second question is whether that non-federal ground is adequate to support the State court judgment. A third, and important related consideration is whether any non-federal ground upon which the State court judgment is purported to be based is constitutionally *tenable.* See *Staub* v. *Baxley,* 355 U.S. 313 (1958). Numerous decisions of the United States Supreme Court hold that matters before it will not be dismissed as alleging only non-federal grounds of decision where an ordinance on its face violates the federal constitution. *Konigsberg* v. *State Bar,* 353 U.S. 252 (1957). It is also to be remembered in the instant case that the Petitioners won a favorable judgment in the trial court, and the Illinois Supreme Court was the first court in which a judgment was rendered unfavorable to Petitioners. Petitioners have at no time abandoned their federal constitutional arguments. It is clear that the validity and construction of contracts through which governing bodies exercise constitutional functions, their consequence on the rights and obligations of the parties, and related matters all present questions of federal law not controlled by the law of any state where the state law which is attempted to be applied is constitutionally invalid. *United States* v. *Allegheny County,* 322 U.S. 174 (1944). See also *Ivanhoe Irrigation District* v. *McCracken,* 357 U.S. 275 (1958).

Where a state statute has been held valid under the federal constitution by its application, the granting of certiorari upon the basis of importance should depend upon this Honorable Court's impression of the correctness of the decision below and the novelty of the issues raised. *New York* v. *O'Neill,* 359 U.S. 1 (1959). In the instant case, the issues raised are important, and the decision of the Illinois Supreme Court incorrectly applies

state law and State of Illinois precedent to impair contracts and furthermore to deny Petitioners' rights to due process and equal protection of the laws. The Petitioners therefore, respectfully request this Honorable Court to grant certiorari.

Respondents' contention that the Fourth Point raised in the Petition was at no time raised in proceedings prior to the Petition for Writ of Certiorari to the United States Supreme Court can, by no stretch of the imagination, be a cause for this Honorable Court's refusal to consider that Point. Point IV., concerning the propriety of the Illinois Supreme Court's decision in light of Illinois summary judgment law, at no time arose prior to the action of the Illinois Supreme Court. The United States Supreme Court is the next recourse of review for Petitioners. The record, on its face, is an affirmative showing of this procedural deficiency. *Bailey* v. *Anderson*, 326 U.S. 203 (1945). The Petitioners could in no way anticipate that the Illinois Supreme Court would resort to a finding of fact contrary to the lower court's findings. This is one of those rare instances in which, following a surprise decision of the Illinois Supreme Court, a federal issue has been born and the federal question can be raised in no other way than through the papers addressed to the United States Supreme Court. At the least, Petitioners respectfully suggest that summary remandment is in order with regard to Point IV.

In light of the inability of the Respondents to face the issues presented in the Petition on their merits, without distorting them in an attempt to block on jurisdictional grounds this Honorable Court's consideration of the Petition, the need for plenary review of the action below is

indisputable. The Petitioners, therefore, urge this Honorable Court to grant their Writ.

Respectfully submitted,

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This participation of Lawrence Wolf Levin, Attorney at Law, in the preparation of this Reply is gratefully acknowledged.

APPENDIX

State of Illinois)
) SS.
County of Cook)

In The

CIRCUIT COURT COOK COUNTY

Illinois County Department - Chancery Division

The Chicago Patrolmen's Association A Not-For-Profit Corporation, in behalf of various members of the Chicago Police Department and Richard Gaffney, Bernard B. O'Reilly and Robert A. Rossi, members of the Chicago Police Department,

Plaintiffs,

vs.

The City of Chicago, a Municipal Corporation and David Stahl, City Comptroller,

Defendants.

No. 72 CH 436

MOTION FOR SUMMARY JUDGMENT

Now comes the Plaintiffs, The Chicago Patrolmen's Association, Police Officer Richard Garrney, Police Officer Bernard B. O'Reilly and Police Officer Robert A. Rossi by Williams and Leonard, Ltd. their attorneys and move this court to enter judgment in favor of the said Plaintiffs, in the above entitled cause.

STATEMENT OF FACTS

This is a case brought by individual members of the Chicago Police Department and the Chicago Patrolmen's Association on behalf of all members of the Chicago Police Department who were adversely affected by the 1971 wage price freeze and the resulting 1972 city budget. As a result of the President's action in August 1971, all scheduled longevity and step salary increases were frozen after August 14, 1971. On November 14, 1971 the Federal Pay Board issued an interpretation stating that longevity and automatic progression increases according to plans or established practices in existence prior to November 14, 1971 should be resumed. For many years members of the Chicago Police Department have been paid in accordance with annual ordinances passed by the City Council, said ordinances providing for various wage scales as covered under the Civil Service System. The ordinances have uniformly provided for automatic increases based on length of service as an employee of the Chicago Police Department, said increases known as step and longevity increases. The step increases came after six months, eighteen months, thirty months, and forty-two months on the job. The longevity increases came after a total of sixty months and one hundred twenty months on the job.

In December 1971 the City Council approved the 1972 city budget which eliminated all longevity and step increases freezing the respective grades as to where they were on December 31, 1971 and in addition providing for a percentage salary increase of from between five (5%) percent and five and one-half (5½%) percent for all the respective grades. The base to which this across the board increase was applied did not take into consideration any step or longevity increases which should have accrued

after August 14, 1971. Subsequently, the city provided for retroactive payments for the period August 14, 1971 through December 31, 1971, for those police officers who failed to receive their longevity or step increases during that period. However, the 1972 city budget though having provided for an across the board increase left those police officers at the same step or longevity classification as they had on August 14, 1971. Thus, all step and longevity increases accruing since August 14, 1971 have been lost at least through December 31, 1972, to the extent that future salary increases are determined by using a rate of pay that does not take into consideration those increases accruing between August 14, 1971 and December 31, 1972.

The Plaintiffs believe that judgment should be granted in their favor for the following reasons:

1. The Complaint, Motion to Dismiss, Answer, Interrogatories and Answers to those Interrogatories have already been filed with this Court.

2. The pleadings filed herein present no material issue of facts between the parties to prevent this Court from making a decision at this time.

3. That the Defendants have argued in their Motion to Dismiss and Answer that the relief the Plaintiffs seek can not be obtained because it has not been provided for in the Appropriation Ordinance for the City of Chicago for the year 1972.

4. The 1972 Appropriation Ordinance for the City of Chicago provided for $203,000,000 in police salaries. The amount of money spent for police salaries during 1972 was $191,000,000. There was $12,000,000 appropriated during 1972 for police salaries which was not spent during 1972.

One of the reasons for these excess funds was because a number of police officers for whom appropriations were made in 1972 either died, resigned, were suspended without pay, or were promoted by merit during 1972.

5. That the action by the City of Chicago in denying the Plaintiffs the step increases and longevity increases accruing to the Plaintiffs as a matter of right, said increases determined merely by the amount of time the Plaintiffs have been on the police force as determined by the calendar, represents an interference with Plaintiffs' contractual rights, said contractual rights protected under Article I, Section 10 of the Constitution of the United States of America.

6. The action of the City of Chicago in denying these increases represents a taking of property without due process of law within the meaning of the 14th Amendment to the Constitution of the United States of America.

7. The principles of promissorial estoppel and equitable estoppel should operate to prevent the Defendants from denying the Plaintiffs the step and longevity increases.

8. The relationship of the Plaintiffs and the City of Chicago is that of employee-employer under either expressed or implied contracts.

9. That the difference in treatment between those employees who already received their next step or longevity increase prior to August 14, 1971 and those employees who would have been entitled to those increases after August 14, 1971 represents a denial of equal protection of the law as provided for in the 14th Amendment to the Constitution of the United States of America, since all employees must be treated equally. Also, the difference

in treatment between those employees already employed prior to January 1, 1973 and those employed after January 1, 1973 represents a denial of equal protection of the law as provided for in the 14th Amendment, since those employed prior to January 1, 1973 have apparently accrued no additional time toward step or longevity increases between August 14, 1971 and January 1, 1973.

Wherefore, for the reasons stated, Plaintiffs pray that this Court enter a Summary Judgment in their favor and against the Defendants and for their costs and attorneys' fees in bringing this action.

The Chicago Patrolmen's Association
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Bernard B. O'Reilly and
Robert A. Rossi, Plaintiffs
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By: Robert F. Sharp
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CERTIFICATE OF SERVICE

Jane A. Costabile, being first duly sworn upon oath, deposes and says that she served the foregoing Motion for Summary Judgment by mailing a true and accurate copy of same to the following on the ..... day of ....., 1973·

Michael Small,
Assistant Corporation Counsel
Room 511 - City Hall
Chicago, Illinois 60602

/s/ Jane A. Costabile
Jane A. Costabile

Subscribed and sworn to before
me this ..... day of ....., 1973.
/s/ Illegible
Notary Public